

Paper prepared for the DFID workshop on
LAND TENURE, POVERTY AND SUSTAINABLE DEVELOPMENT
IN SUB-SAHARAN AFRICA

17-19 February 1999

TENURE RIGHTS AND SUSTAINABLE DEVELOPMENT IN WEST AFRICA:
A REGIONAL OVERVIEW

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INTRODUCTION¹

Sound management of land and its resources has always been ~~considered~~ ~~seen as~~ key to African development in general and rural development in particular. Providing security of tenure ~~is~~ ~~has~~ often ~~been~~ ~~seen~~ as a precondition for intensifying agricultural production and is now increasingly stressed as a prerequisite for better natural resource management and sustainable development, more generally. Whilst observers and analysts of African development unanimously agree on the importance of land tenure, there is less agreement when it comes to finding ~~the best way~~ ~~ways~~ ~~of~~ ~~to~~ providing security of tenure and achieving effective land management. The inherent diversity and complexity of the tenure issue in Africa help to explain why the identification of operational responses geared towards better management is so difficult.

First of all, the notion of tenure is in itself complex. ~~T~~ ~~enure~~ relationships in Africa are characterised by their great diversity, ~~which makes general prescriptions very difficult~~ ~~Generally speaking, it means~~ which makes general prescriptions very difficult.

Tenure may be seen in many ways: it relates to land, as well as to other natural resources, which has led some people to refer to agricultural tenure, pastoral tenure, forest tenure and even tenure of fishing grounds².

Tenure relations must be understood as part of a socially constructed set of relationships. It involves a large number of players, each of whom has his/her own perception and strategy for gaining access to resources. Alongside farmers, who are usually seen as the primary stakeholders regarding land tenure, the legitimate rights of other categories, such as pastoralists and secondary rights holders such as women, tenants and sharecroppers are increasingly being recognised. ~~—Fifth, t~~ The particular role played by the State as a major actor must not be neglected either. This diversity of actors makes it very difficult to devise any satisfactory reform and all the more important to seek a broader consensus on tenure reform. amongst the major players.

Finally, the complexity of the tenure issue is reflected in the hierarchy of interlocking rights which may apply to a single piece of land. For example, land may be subject to the customary rights of the land chief (grounded in the covenant drawn up between the founding group who settled an area and the spirits guarding the land), the rights of each indigenous lineage and its family groups (based on membership of the community), and the rights of incoming populations (based on alliances and contractual relations with their hosts). Access to this land by other groups on a temporary basis may also be negotiated, such as where herders bring their animals to graze stubble after the harvest (based on an exchange of goods and services).

If one adds to this set of competing claims the clash between the social legitimacy of tenure proclaimed by custom and the formal legality of tenure claimed by State law³, the scale and difficulty of the task become clear. Researchers need to develop a language and set of

¹ Particular thanks are due to Rebeca Leonard for inputs into this paper.

² I H. Ouedraogo and S. Traore, Introductory Report to the St. Louis Symposium.

³ In some West African countries such as Guinea, written Muslim law (Charia) exists alongside State law and customs of African origin. However, as it is not codified, problems in interpretation have arisen in Guinea. V.N. Bouderbala

methods which allow us to interpret the shifting nature of tenure in its many and various forms. At the same time, they need to contribute this understanding to national policy debates and assist development workers who need practical tools to handle tenure related issues as they arise in the field.

Establishing effective tenure policy and legislation is vital from the economic, environmental and social points of view. *In economic terms*, land is the mainstay of most human activity in West Africa and remains of major importance to national economies throughout the region. Access to this natural resource therefore directly or indirectly affects the incentives faced by land users to invest in raising productivity. *In environmental terms*, it is acknowledged that there is a close link between the effectiveness of natural resource management and the establishment of tenure rules which benefit those involved in managing resources⁴. Where such links do not exist, land users will have little reason for careful management and investment in the resource base. *In social terms*, land constitutes an asset of great value to people's identity and sense of belonging. At the same time, conflicts around tenure and access to resources is likely to become an increasingly critical factor, raising the risks of destabilisation in the West African sub-region⁵. Of course, land tenure rules has may also been viewed as important *in political terms*. Control over land has often been exploited as a means to exert power, to exact taxes or tributes and to maintain or build political alliances.—

Below, we shall describe the main land tenure problems faced in West Africa, before assessing some of the reforms initiated in a selected number of West African countries.

1. TENURE PROBLEMS IN WEST AFRICA

Land tenure regimes in West Africa present a paradoxical combination of traditional principles of land management which have remained relatively unchanged, and day to day practices which are undergoing dynamic change, linked to the transformation of economic, political and institutional factors, and the gradual evolution of social values.

1.1 ~~The unchanging nature of~~ Fundamental customary principles in land-use management

Tenure practices in West Africa almost always draw on a set of tenure principles handed down from the dawn of time. Access to land, conflict management and institutions for managing tenure continue, in this way, to be governed by the customs of each community which, despite diversity between settings, betray certain common features.

a. The institution of land chieftancy

As regards institutions responsible for managing land, the land chief is an institution found in all societies in the sub-region. Whether the socio-political organisation of the society

⁴ V.M. Kamto, Environmental law in Africa

⁵ Praia Declaration — Summary report, Praia Regional Conference, CILSS, Ouagadougou, 1995.

conforms to the centrally-controlled model or the "acephalous" model⁶, descendants of the lineage which first occupied the land are acknowledged to have the task of allocating access to land, as well as its management, in the name of the larger community. Land chieftancy and political chieftancy (e.g. village or canton chiefs) sometimes coincide, but in most cases the roles are clearly distinguished. The village chief manages the ordinary affairs of the community and deals with the government, while the land chief fulfils functions that are more strictly religious (conducting sacrifices and other rites linked to the agricultural calendar) and as well as legal (settling land disputes).

b. The community nature of tenure rights

Rights in relation to land are first of all vested in the lineage before being redistributed to individuals. Indeed, in the conception of traditional rights, the holder of a right is not the individual, but the group, usually represented by the oldest member of the lineage. Individuals only acquire rights as a result of belonging to (if they are indigenous) or being integrated into (if they are outsiders) the group. In the same way, conversely, exclusion from the group (banishment is particularly feared) automatically causes loss of rights over land⁷.

c. Flexibility in access to land

Lending land has long been a means by which people could gain access to resources. When a lineage was short of land, it could be allocated land from the village's available reserves or borrow land from a lineage which had some available. In the same way, when a migrant arrived in a village, he could obtain land after putting in a request to the village council, or land chief. Even today, lending continues to play a major role in enabling people to gain access to land. So long as land resources are available, the loan of land cannot be refused to applicants, whether native-born or incomers. However, its growing scarcity is beginning to disrupt such lending mechanisms, and the terms on which loans are negotiated.

1.2 Current shifts in tenure practices

The stability in the principles underlying traditional tenure has been accompanied by a more or less radical change in actual tenure as practised. Current shifts in tenure practices can be linked to demographic and environmental, as well as political and institutional factors. Noteworthy in demographic and environmental terms is the increase in population, high rates of migration, accompanied by growing pressures on resources and rapid urbanisation⁸. It is estimated, for example, that by 2020, some 14 million francophone Sahelians, roughly 15-20% of their countries' total projected populations, will not be in their countries of origin. In political and institutional terms, the process of moving towards democracy and decentralisation is throwing into ever sharper focus issues such as how best to maintain common policies across the country while decentralising land-use management to rural communities, and the desire by the state to ensure protection of rights for some marginalized rural groups (e.g. women, pastoralists and young people) whose traditional rights have been weak.

⁶ Traditional state-controlled societies are characterized by an extremely hierarchical power structure, whereas traditional "headless" societies are marked by the absence of institutionalized power governing the society as a whole.

⁷ Hubert M.G. Ouedraogo, "Réformes foncières et développement en Afrique de l'ouest", Revue Burkinabe de droit, Special Issue No. 15 198..., p. ...

⁸ *West Africa Long Term Perspective Study, CILSS/ Club du Sahel, 1995*

Overall, the main transformations in tenure terms may be summarised as follows:

a. Increasing scarcity of resources.

This can be seen in densely populated regions through the growing number of tenure conflicts and, in less populated regions, in the replacement of land lending practices by an increasingly active strategy of land occupation as a means to pre-empt others gaining access⁹.

b. Loss of authority on the part of the traditional land management institutions.

This development is related to the gradual disappearance of community land reserves (which were under the management of the land chief), and as a consequence the increasingly important role played by lineage elders in managing tenure issues. It also relates to lack of government recognition of traditional institutions as the main means of managing access to land and their various attempts to establish state controlled structures for land allocation. In some areas, loss of authority is also due to the increasingly active involvement of customary authorities in party politics, and the growing perception that chiefs are no longer acting in the interests of the broader social group. The loss of authority can be seen in the difficulties experienced by the traditional authorities in imposing lasting solutions to the disputes over land submitted to them¹⁰.

c. A growing trend towards transactions involving land in the rural areas.

These result in a slow but definite process of land privatisation. In many places, this process has been led by urban dwellers moving into rural areas looking for investment opportunities in the agricultural sector. It can be clearly seen in Burkina Faso today¹¹, but it has also been under way for some years elsewhere. In Guinea, for example, "we are beginning to see the spontaneous emergence of a very gradual but quite indisputable move towards individualisation of rights in the rural sector, leading eventually to the formation of a minority sector of private owners enjoying legal safeguards and substantial market mobility, being able to sell, mortgage or rent land. The emergence of this sector may stimulate investment flows towards agricultural production and is, in this sense, positive. However, it is essential not to lose sight of the fact that uncontrolled expansion of that sector and complete liberalisation of land transactions in rural areas would undoubtedly lead to a restriction of the tenure base of peasant communities."¹²

d. The resurgence and worsening of conflict situations

This a clear indication of the changes affecting the tenure scene in West Africa. In Guinea, for instance, the causes of conflict include the expansion of cultivated areas and increased livestock numbers, as well as the economic liberalisation policy, the extension of market relationships and the appearance of a market in land¹³.

| Land conflicts arise from a variety of circumstances and include those:

⁹ Since custom does not authorize refusal to lend land when it is available, people hurry to clear it [for farming purposes] so that it becomes unavailable.

¹⁰ H. Ouedraogo, P. Mathieu, D. Thieba, Alternative management of conflicts related to natural resource use. Summary report, Ouagadougou FAO - CILSS, 1975.

¹¹ In the West and East of Burkina.

¹² N. Bouderbala, op. cit. p. 11.

¹³ N. Bouderbala, op. cit. p. 6.

- between herders and farmers, over access to pastoral resources and over damage to crops particularly in the Sahelian wetlands and in the rainfed farming areas of the drylands where farm densities are rising or where fodder resources have become increasingly valuable to farmers;
- between different groups of herders, notably over grazing areas and associated water points. These are occurring in various parts of the Sahel and in some cases result in armed conflict;
- between neighbouring communities, as their members progressively occupy the whole of their respective territories and thus raise issues related to the boundaries between traditional tenure jurisdictions. This is increasingly prevalent in the more densely populated areas, where the boundaries between the customary territories of villages and lineages are often poorly defined;
- between indigenous and migrant farmers, as the former seek to circumscribe their existing rights to land and as the latter seek to gain access to land or defend their interests. Because of historical and potential opportunities, this kind of conflict is most apparent in the coastal regions, although clearly other areas are affected;
- between urban elites and peri-urban populations, as cities expand and as the incentives for speculative land acquisitions and sales grow. The continued growth of cities throughout the region is likely to exacerbate many such conflicts;
- between and within generations as land becomes scarcer and holdings smaller, particularly where senior customary landholders have already alienated land to migrants, thus reducing the land available to their own juniors;
- between the state and customary landholders, particularly in areas of gazetted forests where competition for agricultural land or non-timber forest products arises, or in areas which have the potential to support development projects, such as large-scale irrigation schemes.

2. STATE POLICY AND THE PROBLEM OF TENURE SECURITY

What policies are being adopted by West African states to deal with the rapidly changing tenure situation? The Praia Conference (CILSS - Club du Sahel, 1994) on "~~the~~Issues of tenure ~~issue~~ and decentralisation" recommended that Sahelian governments should initiate land reform with a view to providing security of tenure to rural stakeholders on the one hand and, on the other, assisting with conflict management in the sub-region. All states in West Africa have undertaken or are in the process of launching more or less thorough-going land reform¹⁴. There are some common features, but the reforms also reflect significant differences¹⁵, sometimes in terms of methodology and sometimes as regards the options selected by legislators. Having examined trends in tenure reform in West Africa, we shall then consider pilot tenure security projects launched in the field.

2.1 *Current trends in land reform*

¹⁴ The forerunner of West African land reform is the Senegalese Law of 17th June 1964 on state-administered property. Reform in Niger resulting from the 1993 edict laying down "Guiding Principles for the Rural Code" is one of the new generation of land reforms ([see below](#)).

¹⁵ Kevin Bohrer and Mary Hobbs, Review of CILSS-member country legislative reforms. Land Tenure Center, Madison, 1996.

a. Objectives of Land Reform

The reforms being undertaken in many countries share a number of general objectives: encouraging better natural resource management by clarifying rights of access to and control over resources (Mali, Burkina Faso, Ghana¹⁶); improving incentives to invest in land (Burkina Faso, Guinea); preventing the emergence of conflict situations by providing a means to achieve consensus between different stakeholders (Niger); etc. In other cases (Senegal, Nigeria), the objectives of reform are more of a legal nature, and seek to harmonise overlapping tenure rules (traditional, Muslim and modern law). At the same time, governments have sought through land reform programmes to acquire rights over land for development purposes, in the name of the 'common good', as well as a means of conferring political patronage (Nigeria).

A detailed comparative review of tenure reform in West Africa cannot be contained within the scope of this paper. However, it is worthwhile comparing approaches to two specific issues which have continued to concern reformers in West Africa: determining the rights of the State; and how to deal with customary land rights.

b. The concept of State property ~~—should this be a subheading of a?~~

West African states have always seen themselves as responsible for instigating rural development. In this regard, they have tried to gain control over substantial areas of land in order to pursue their development policies. But how can the State acquire and guarantee land rights in a context in which land is controlled and managed by indigenous communities in accordance with principles emanating from custom? Land reforms have come up with various ways of tackling this question.

The general trend in legislation is towards asserting a State monopoly over land ownership¹⁷. Thus, in Nigeria, the 1978 Land Use Decree sought to impose a nation-wide, uniform system of land tenure within which the state acquired formal ownership of all land. In 1964, Senegalese legislation¹⁸ redefined what it considered to be state property as comprising four different kinds of land: urban, gazetted, village land and pioneer zones. ~~—While land is may be owned by the State, day to day management is devolved to rural communes, the elected body at district level, who establish local rules for the allocation of land to, and withdrawal from rural users. Communities are also granted access to state-owned forest reserve areas, provided they develop and adhere to a management plan approved by the Forestry department.~~

Land tenure law in Burkina Faso¹⁹ is more radical, and rules that all land is part of the national estate belonging to the State as of right. Although private ownership of land is recognised, it is seen as an exceptional situation and land title can only be obtained through complex and extremely expensive procedures which makes such a form of tenure relatively rare. The approach adopted in Niger, Cameroon and Guinea is different. Land that is

¹⁶ In Ghana, Land Title Registration was introduced in response to mounting litigation over entitlement to land, especially in cash crop regions. However, the application of this measure, introduced in 1986, has not yet been extended outside the greater Accra Region.

¹⁷ H.M.G. Ouedraogo, Réformes agro-foncière et développement en Afrique. Revue burkinabe de droit, No. 15, 1989, p. 89.

¹⁸ Law No. 64-46 of 17th June 1964 on state property.

¹⁹ Law No. 14/96/ADP of 23rd May 1996 on agrarian and property re-organization.

considered to be vacant belongs to the State. The law in Niger lays down that vacant lands are those where no proof of exclusive (private) ownership can be produced, while elsewhere land is considered vacant where it has lain fallow for a certain number of years (Mali). In Ghana, the 1962 State Lands Act provided government with the right to acquire land 'in the public interest', with compensation being determined by the Land Valuation Board. However, such provisions are considered to have been open to abuse, such that the 1992 constitution specifies much more clearly the limited conditions under which 'public interest' can be used for compulsory acquisition. It also lays out the need for rapid and fair compensation, and for the original owner to take back the land where the original public interest purpose has not, in fact, materialised.²⁰

c. Attitudes with regard to customary land rights

The extent to which legislation in the different countries recognises customary tenure varies considerably. The general trend, drawing on colonial traditions ~~in respect of tenure~~, shows hostility towards ~~and unwillingness to recognise~~ customary land rights. ~~Thus, For example~~ the Senegalese law of 1964, which is still in force, opted to abolish customary rights²¹ ~~—the more recently?? Ask Bara. (though, as we have seen, the law has evolved to allow land management by the Conseils Ruraux).~~ —The law in Burkina Faso takes the same ~~attitude approach. while~~ In practice, customary rights are tolerated so long as they do not compromise the government's plans for development schemes, although during the Sankara administration of 1983-7, there was a concerted attempt by the state to break the power of traditional chiefs, by taking from them their rights under custom to administer land. This was done by the creation of village level committees (the *Comités pour la défense de la Révolution*) with powers to allocate land. However, in recent years, traditional chiefs have been able to re-assert themselves as major players in the land tenure debate, as can be seen by their role in delaying revision of land tenure reforms (the RAF). In Ghana, there has been a long-standing alliance between the traditional chiefs in whom land is vested and the national political elite. This serves to blur somewhat the distinction between customary and statutory systems, insofar as the latter has bolstered the authority of the former. Mali's state-oriented tenure regime instituted under the 1986 Code domaniale et foncier is currently under debate. Amongst the issues needing to be addressed are its failure to recognise rights to grazing land as constituting putting land to good use (*la mise en valeur*), a shortcoming which may be tackled in revisions to the pastoral code to be re-drafted in 1999. Customary practice continues to be followed in most areas, although in high value, high density areas, such as the inner Niger Delta, conflict between competing users leads frequently to recourse to government adjudication.

Niger has taken a different tack, deciding to recognise the equality of all land rights whatever their origins (registered or customary ownership) (see below). Togo²² followed a similar line, recognising customary rights, but making their confirmation subject to evidence that the land was being put to productive use. In recognising rights, it is important to consider whose

²⁰ Kotey, N A The 1992 constitution and compulsory acquisition of land in Ghana: Opening new vistas? In: Gorée workshop proceedings, IIED/GRET/University of St Louis. 1997.

²¹ There is currently a debate surrounding whether or not land in Senegal should be privatised. There are three options under discussion, broadly promoting total privatisation, a mixed system which includes both privatisation and some type of communal ownership or maintaining the status quo.

²² Ordinance 92/019 of 30th March 1992 on the Land and Property Code.

rights are given official recognition. Land titling and registration systems in many cases give greater security to household heads, but can weaken the rights of other family members, particularly women, and those of secondary land users, such as visiting pastoralists. In Mali, however, national tenure legislation has granted broader tenure rights to women than is often the case under customary rules, by allowing women the possibility of registering land independently.²³

Leaving aside the wider options, the aim of each reform is to provide more security of tenure. ~~There are Here, we present and analyse some four of the~~ pilot initiatives in progress. ~~which are worth analysing.~~

2.2 PILOT LAND-USE MANAGEMENT SCHEMES

IVORY COAST: The rural land-use plan

a. Aims of the approach adopted

The tenure situation in Ivory Coast is characterised by a pronounced trend towards agricultural intensification, mainly related to the development of cash crops (e.g. coffee and cocoa). Migration is a widespread phenomenon with very serious implications for pressures on land, and the terms on which different migrants gain access to resources. Migrants from Burkina, Mali and Niger currently number almost 3 million in Côte d'Ivoire which is estimated roughly at a quarter of the country's total population.²⁴

The Government was moved to act by the realisation that economic issues and increasingly acute social conflicts are now crystallising around the land tenure issue. It has become a matter of urgency, even in the absence of appropriate legislation,²⁵ "to put an immediate end ... to the chaotic situation of land tenure causing dangerous speculative movements which could lead to the State being sidelined to the advantage of foreign private interests".²⁶

The Government has taken a pragmatic approach, deciding to try out a new— land-use management approach, in the shape of the rural land-use plan,²⁷ without first carrying out overall reform of the tenure system. ~~It is planned to draw Lessons drawn~~ from this experiment ~~with a view to subsequent~~ will be used in the formulation of ~~a new law on~~ land tenure legislation.²⁸

²³ Elbow et al. 1996. Land tenure profiles, Land Tenure Center, Wisconsin.

²⁴ *West Africa Long Term Perspective Study, CILSS/ Club du Sahel, 1995*

²⁵ A law on land tenure, dated 20th March 1963, adopted by the National Assembly, was never enacted by the President of the Republic.

²⁶ M.J.R. Okoin, Le plan foncier rural de Côte d'Ivoire: une démarche instrumentale, in *Politiques des structures et action foncière au service du développement agricole et rural*. Paris, CNASEA, 1998.

²⁷ The legal foundation for this experiment seems to be a paper from the Council of Ministers dated 21st December 1988, agreeing to pilot the Rural Land-Use Plan in seven particular areas. See *Etude juridique et administrative du plan foncier rural Abidjan 1996, Vol. II, chap. 4, p. 7*.

²⁸ In legal terms, the aim was in fact "on the basis of the Rural Land-Use Plan, to lead to the preparation of a relevant rural code which could then be adopted by stakeholders in the rural environment...".

b. Details of the approach

The Government's response has been to launch a pilot project, the "Rural Land-Use Plan".²⁹ This is a modified form of land register. Its purpose is neither to set up a land taxation system, nor acquire land by the state nor settle land-related conflicts;³⁰ Rather, the main idea has been to clarify the tenure position of the various stakeholders at local level by drawing up an inventory of existing rights and safeguarding them through formal recognition made possible through their registration. As stated in the 1988 Council of Ministers' report, the RLP will compile a register on "the current tenure situation by recording rights to land as they are perceived and acknowledged by the villagers and the administration, as well as rights resulting from agreements between neighbouring individuals, families and villages, as described to the pilot project's survey team and which are not disputed by other interested parties".³¹

c. Putting the approach into practice

The Rural Land-Use Plan (RLP) will involve making an exhaustive inventory of all land rights, whether individual or collective, customary or modern.

In methodological terms, the RLP particularly stresses:

- voluntary participation of ~~the~~ local people
- taking account of actual practice in relation to tenure

With regard to community participation, pilot registration operations only take place once villages have agreed that they want to take part in the work³². ~~As regards taking actual practice into account,~~ ~~†~~ The RLP takes care to ~~render register~~ the community's own perception of tenure relationships, ~~so it is not a matter of rather than~~ interpreting those relationships in accordance with ~~the provisions of~~ current legislation.³³ Consequently, ~~holders of~~ rights ~~holders~~ may be individuals, but are more often lineages or segments of lineages.

~~The Rural Land-Use Implementation of the~~ Plan ~~operation~~ begins with a series of preliminary activities ~~intended~~ to gather information on the areas concerned.³⁴ The tenure surveyors then records holders of rights or entitlements/~~derived rights~~³⁵ and marks out the plots; receipts are issued to holders of land rights noted in the inventory. The operation ends with a publicity phase, ~~intended to ensure and~~ ratification of the Land-Use Plan, which will then ~~acquire legal status~~ ~~become a document with legal value instead of a purely technical~~

²⁹ In the absence of an appropriate legal framework, the Government of Ivory Coast pragmatically decided to issue directives by means of decrees.

³⁰ However, when a dispute does arise, the RLP either offers to mediate [a very controversial approach] and records the results of the negotiations, or makes a note on the land dispute in the register.

³¹ Cabinet Klein et al., Etude juridique et administrative du plan foncier rural, Vol. II, Chap. V, Annexe 11.

³² In practice, very few villages have declined to take advantage of the RLP operation, partly as a result of mimicking their neighbours of course, but also and above all because its ambitions are modest: it is not a matter of altering land rights, or setting up a land tax system, but of revealing, recording and confirming the existence of established rights. The voluntary nature of the operation could, however, run into difficulty if some people within the village refused to register their land.

³³ Except in cases where someone has already entered the sphere of modern law by registering land and holding a properly issued title to it.

³⁴ The preliminary phase covers the following main activities:

- mapping on the basis of aerial photography
- survey of the social and cultural environment of the programme area (demography, production system, history, etc.)

³⁵ Meaning people who have acquired rights from the landholder.

document.³⁶ It is intended that the final Land-Use Plan will be held by the departmental services of the Ministry of Agriculture who will keep records on all such village level surveys.

d. Critical comments

- It is quite clear that, in such a process, the effectiveness of the approach will depend on the quality of the information collected. In this regard, the RLP carefully distinguishes between managers of land (holders of management rights) and users of land (holders of usage rights). The legal and administrative study on the RLP sometimes noted "inadequate attention [paid by the teams] to the expression of the rights of customary owners and, consequently, a degree of imprecision in this regard in transcribing such rights on tenure survey forms ...".³⁷ Other observers have also stressed that "external pressure exerted on the project to increase productivity - the "area covered" - while reducing the time needed to a minimum, carries a risk that complex tenure situations will be simplified, leading to a reductionist view".³⁸
- Community expectations of the Rural Land-Use Plan vary depending on those concerned: "indigenous communities want to have the boundaries of their land clarified in order to resolve or avoid quarrels with neighbours and to have their status as land owners recognized ... migrants, for their part, are looking for confirmation of their usage rights over a sufficiently long period that they are no longer exposed to threats of expulsion by the residents".³⁹
- Establishing rights over land is still a rather uncertain process.⁴⁰ Under the circumstances, a degree of caution is needed, limiting the legal scope of the land inventory initiative to begin with. More specifically, the inventory must not be allowed ~~immediately~~ to trigger a procedure whereby ~~clearly identified~~ individuals may obtain ~~recognition of~~ rights over land which has been registered and divided up exactly ~~clarify with French text and Hubert???~~
- Of course, the usefulness and effectiveness of the Land-Use Plan will depend on constant, rigorous monitoring. In particular, all transactions and changes involving land tenure must be reviewed regularly. This has implications for costs of maintaining and updating the register.

NIGER: The Land Commissions

a. Aims of the approach adopted

Like most Sahelian countries, Niger faces many tenure problems. The specific features of these doubtless reflect the vast area concerned, the great diversity between contexts and the enormous power of customary institutions.⁴¹ ~~In Niger, tenure conflicts seem to be of major concern to the political authorities to a greater extent than elsewhere, given that~~ every year, many ~~incidents~~ **tenure conflicts** are reported, especially between farmers and between herders

³⁶ A period of time is set aside to inform the public about the information recorded in the Land-Use Plan and receive any objections. At the end of this period, the RLP becomes an official document.

³⁷ Cabinet Klein et al., Etude juridique et administrative du plan foncier rural.

³⁸ Volker Stamm, Structures foncières et politiques foncières en Afrique de l'Ouest, Paris, l'Harmattan, 1998, p. 177.

³⁹ V. Stamm, op. cit., p. 178.

⁴⁰ Cabinet Klein-Goddard, op. cit., Vol. II, Chap. 5, p. 11.

⁴¹ Unlike Burkina Faso and Ivory Coast, Niger is, like Guinea, a mainly Muslim country.

and farmers.⁴² Faced with this situation, the authorities decided ~~first of all~~ to redefine the overall legal framework of land-use management⁴³ within a Rural Code –and to begin putting it into practice by setting up "Land Commissions".

b. Details of the approach

The Land Commissions represent the basic institution for implementing the Rural Code. Their ~~essential-main~~ task is "to ensure rational management and safeguard the rights of rural producers"; in practical terms, this means making an inventory of land rights, collecting reports on conflict settlement and ~~establishing and~~ keeping rural records.⁴⁴ ~~Rural~~Such records should, ~~in principle,~~ consist of ~~two types of documents:~~ a diagram of the rural area concerned and a file containing individual records in the name of each holder of rights. Set up at arrondissement level, the Land Commissions are administrative structures chaired by the sous-préfet of the arrondissement.⁴⁵ They are mainly made up of representatives of the various local technical services (agriculture, planning, environment, livestock, land register and agricultural engineering) along with representatives from the different communities concerned.⁴⁶

c. Putting the approach into practice

~~In actual fact,~~ Niger has launched pilot programmes to set up Land Commissions gradually, starting with the most conflict-ridden regions.⁴⁷ The Land Commissions begin by organizing ~~information and~~ awareness-raising campaigns. ~~The aim is~~ to make sure everyone is advised that work on an inventory is to be begun.⁴⁸ ~~The Land Commission schedules and carries out regular missions to make lists of applications for registration. The operation consists of gathering i~~Information is gathered on the identity of the applicant; the type and approximate location of his field; and the origin of the right (inheritance, purchase, etc.). The Commission registers both family and individual property as well as community property (grazing lands, livestock tracks, gazetted forests, pools, etc.). Reports on conflict settlement are collected as part of the process of making an inventory of rights.

d. Critical comments

- The operation to record land rights is appreciated by local communities and indeed eagerly awaited by people in some villages ~~who do not understand why the Commission has not yet come to draw up an inventory of their land.~~ The extent of interest shown is linked to the expectation that the inventory will help to establish a more peaceful climate for land-use management. Some people are even prepared to pay for the issue of a certificate which would free them for good from incessant disputes and family quarrels.⁴⁹

⁴² H.M.G. Ouedraogo et. al., Evaluation des mécanismes de mise en oeuvre du code rural à travers l'expérience des commissions foncières, DANIDA/USAID, Niamey, 1996, p. 8.

⁴³ Ordinance No. 93-015 of 2nd March 1993 laying down guiding principles for the Rural Code.

⁴⁴ Article 117, Rural Code. In addition, the Rural Code give the Land Commissions the task of helping to establish land-use management plans and controlling the exploitation of natural resources.

⁴⁵ According to the administrative structure of Niger, the arrondissement is a territorial authority coming between the département (headed by the préfet) and the district headed by the mayor.

⁴⁶ Representing farmers, herders, women and young people (one each).

⁴⁷ In 1996, only two Land Commissions were operating, in the arrondissements of Mirriah and Mainé Soroa. Now there are around ten of them.

⁴⁸ Information campaigns also provide an opportunity to explain the guiding principles of the rural Code. In this connection, the basic text has been translated in several local languages.

⁴⁹ 46 H. Ouedraogo et. al., Evaluation des mécanismes de mise en oeuvre du Code rural ..., p. 34.

- This overall positive assessment is, however, tempered by the more reserved opinion expressed by some marginal groups, especially women and pastoralists. The latter are worried that their access to natural resources ~~may not be sufficiently taken into account and~~ may even be called into question by the inventory operation. Women are less well-informed about the objectives and usefulness of the inventory exercise.⁵⁰
- Unlike ~~the~~ Ivory Coast, Niger does not seem to have resolved technical difficulties in establishing rural records. The absence of enforcement decrees on keeping rural records and of technical instructions on procedure has long lain at the heart of this uncertainty.⁵¹ As a result, the process has not been properly followed through ~~to the end~~ (issuing certificates to listed owners). ~~serious difficulties also in Ivory Coast, where high costs maintaining and updating??~~

BURKINA FASO: Village land-use management (*gestion des terroirs*)

a. Aims of the approach adopted

The tenure situation in Burkina is dominated by the perception of increasingly scarce natural resources and environmental degradation, as well as by awareness of the need to change behaviour in order to achieve more sustainable patterns of land use. Burkina Faso is characterized by ecological differences between the heavily degraded low rainfall regions in the north and centre, which generate major flows of migrants seeking work and land elsewhere, and the southern regions which are much better endowed in terms of land availability and rainfall. Since the revolutionary period of 1983-87,⁵² the authorities in Burkina have taken a voluntarist approach in trying to respond to the concern for more rational natural resource management. Their two-pronged strategy which was intended to revolutionise agricultural production and achieve food self-sufficiency, while conserving the environment, involves reform of the land tenure system⁵³ and ~~experiments with~~ "village land-use management" (*gestion des terroirs* - GT).⁵⁴ ~~The land reform instituted in 1984⁵⁵ was intended to revolutionise agricultural production and achieve food self-sufficiency, while conserving the environment by what means and assumptions??. Village land use management was to provide the "operational framework for enforcing the new tenure law",⁵⁶ especially in rural areas.⁵⁷~~

Challenging the classic centralised, interventionist approaches of development programmes, village land-use management (GT) claims to be a new grassroots development approach,

⁵⁰ Information does tend to go mainly to heads of family, meaning men; however, in some regions, women have had land rights of their own acknowledged and recorded (e.g. Mirriah region).

⁵¹ Use of the classic topographical survey has often been seen as inappropriate (expensive and slow), but clear alternatives were not defined [current situation?].

⁵² 49 From 1983 to 1987, following the coming to power of the National Council of the Revolution (CNR).

⁵³ Ordinance No. 84-050 of 4th August 1984 on agrarian and property reform in Burkina Faso, amended subsequently in 1991 and 1996.

⁵⁴ In political terms, attempts were made at popular mobilization through the slogan of the "3 combats", against brushfires, uncontrolled woodcutting and straying livestock.

⁵⁵ Ordinance No. 84-050 of 4th August 1984 on agrarian and property reform in Burkina Faso, amended subsequently in 1991 and 1996.

⁵⁶ Second national seminar on Agrarian and Property Reform (RAF). General report, Ouagadougou, DAT, 1990, p. 205.

⁵⁷ The PNGT (National Village Land-Use Management Programme) was set up in 1986, one year after the statutes enforcing the RAF were adopted.

relying on the empowerment of local communities to manage the resources within their territory.⁵⁸ The approach is designed to meet two main concerns:

- fostering the socio-economic development of rural communities, who draw ~~the bulk~~ most of their income from natural resource use;
- trying to achieve a better ecological balance with a view to sustainable development.

In village land-use management, "the tenure issue is of crucial importance, since the success or failure of the approach depends on finding a satisfactory solution", providing sufficient security and control at village level to encourage investment in and management of the land.⁵⁹

b. Details of the approach

Village land-use management combines land-use planning techniques with capacity building. In terms of land-use planning, the approach consists of promoting rational land use and preventing land-related conflicts through mutually agreed zoning (usually into agricultural and pastoral zones, forest zones set aside for regeneration, etc.). Building stakeholders' capacity hinges on organising local communities, in particular through setting up "village land-use management committees". To begin with, the GT approach was conceptualised as an "operational approach" with four main stages:

1. Informing and raising the awareness of communities with a view to organising them;
2. Marking out the village lands, making an inventory of resources and zoning of land according to type of use;
3. Negotiating a "land-use planning and local development" contract between the State and local communities;
4. Fulfilment of the contracts by the communities with the help of government technical services.

This approach has been gradually amended to suit the different situations found in the field.

c. Putting the GT approach into practice and critical comments

Generally speaking, the process of village land-use management is led by "mobile multidisciplinary teams" attached to the national programme and each responsible for a group of villages. Other development projects have, with some variations, adopted this method of organisation and decentralisation of activities in the field.

Awareness-raising activities were designed to enable local communities to understand the potential as well as the real state of degradation of their natural resources, particularly through use of methodologies such as participatory appraisal and exchange visits between areas. ~~While continuing to inform and raise awareness, m~~ Many projects have used a range of incentives, whereby certain social investments are funded by the project (schools, health centres, etc.) in exchange for villagers undertaking communal activities aimed at protection of soils, woodlands, grazing and so on.⁶⁰ This is ~~to take account of~~ in recognition of the fact that

⁵⁸ Stressing the vagueness of the concept of village land-use management, Sally Falk Moore suggests that it might be better defined as "all those processes of organizing local communities which involve concerted land-use planning in order to enhance the natural resources of their land and ensure sustainable development", Sally Falk Moore et al., Rapport de mission Burkina Faso, Club du Sahel - ARD - PNGT, Ouagadougou, 1991, p. 5.

⁵⁹ Sally Falk Moore, op. cit., p.5.

⁶⁰ Socio-economic measures to deal with the priority needs expressed by the communities during the appraisal phase (education, health, water supply, etc.).

communities faced with survival issues are rarely prepared to listen to talk about conserving the environment unless this is linked to solving their ~~concrete~~ immediate problems.

Putting the approach into practice relies on the effective commitment and empowerment of the community. This is why ~~organising communities through~~ setting up village land-use management committees has been seen as a vital element of the GT approach. ~~Village land-use management~~ These committees have been given wide powers over land-use management (allocating land; assessing and withdrawing land), as well as ~~in respect of~~ over local development in general (eg mobilising the community around socio-economic projects; carrying out activities in connection with natural resources and so on). Questions have arisen as to the legitimacy and effectiveness of village land-use committees, although some kind of village level structure is necessary as part of the GT operational approach. ~~Village~~ The committees set up by GT projects often lack the social legitimacy inherent in pre-existing traditional land-use management institutions. ~~structures, while~~ † Their effectiveness will depends on the degree of authority they can exercise both with regard to the communities themselves, the local administration and development projects in general.

As to marking out the boundaries of village lands, the operation has raised more problems than it has solved. Traditionally, even though the boundaries of the land are well known by the relevant people, many customs proscribe marking them. Marking out boundaries is usually seen as an act of hostility towards neighbouring communities. The measure has only been enforced as a way of solving serious conflicts and when accompanied by the performance of the appropriate religious ceremonies.

Many criticisms have been levelled against operations involving the zoning of land for different purposes. They do not always take into account the dynamic nature of rural activities in spatial terms. Mobility is a key part of the system of both agricultural (fallowing) and pastoral (transhumance) production. Moreover, it is common for a single area to support two or more activities undertaken by different groups.⁶¹ ~~In addition,~~ † The perverse effects of zoning on some vulnerable groups, such as pastoralists, have been much criticized.⁶²

Finally, as regards management and development contracts, this is where the GT approach has made the least progress. Some projects have worked on preparing land-use plans with communities, which comprise a list of activities and investments to be undertaken, and the responsibilities of different parties to carry them out. However, it is often questioned whether local people really have a sense of ownership of such plans. In addition, ways have not always been found to ensure ratification and joint implementation of the plan by the community and local administration.

Overall, one might conclude that the GT approach has ceased to provide the framework for implementation of land reform and has instead become its hostage. ~~can HO clarify what he means here??~~ Providing security of tenure is in fact increasingly seen as the pre-requisite for success with village land-use management approaches.⁶³

⁶¹ For example, land may be cultivated by one person, harvest residues grazed by the livestock of a second and fruit picked by a third.

⁶² As a result of zoning, pastoralists can find themselves confined to poor, degraded areas; in addition, zoning is often a pretext for reducing their mobility on the grounds that areas have already been set aside for them.

⁶³ H. Ouedraogo et al.: La Sécurisation foncière en milieu rural, Ouagadougou, PNGT - PLIEA, 1998.

NIGERIA: The Land Use Decree.⁶⁴ ~~2 more boxes on anglophone countries (Nigeria? Ghana?)~~

a. *Aims of the approach adopted*

The Nigerian Land Use Decree was promulgated in 1978, by the Federal Military Government. It vested all land in the hands of the government, 'to be held in trust and administered for the use and common benefit of all Nigerians'. The thinking behind the LUD stems from the view prevalent in the 1960s and 70s that customary tenure systems were by their very nature backward and unable to provide a framework for increasing investment in land and the development of a dynamic agricultural sector. The state was seen, by contrast, as being able to act in a wiser, more disinterested fashion, and to identify opportunities for economic development and growth.

b. *Details of the approach*

So far as rural land is concerned, the decree provides for the establishment of Land Allocation Advisory Committees, appointed by the governor of each state, with the task of administering land. All previous forms of title were replaced by 'rights of occupancy' which could be granted by local government, which also acquired the right to revoke customary rights of occupancy where such land was needed for public purposes. Compensation would be paid only for unexhausted improvements to the land rather than for the loss of land itself.

c. *Putting the approach into practice*

Government used the LUD as the means to acquire major areas of land for a variety of purposes, including housing for government staff, and building of universities, as well as for irrigation schemes and other development projects. Equally, significant areas of land were turned over to large commercial interests for large scale agricultural production, at the expense of smallholder farmers and herders. Compensation has often not been paid, or has been only minimal.

d. *Critical comments*

- Far from creating a greater sense of security and reducing land speculation, the LUD has helped prompt a movement towards the acquisition of land through whatever means people can exploit, while distribution of land holdings has been a very important form of political patronage for those in power.
- Certificates of 'rights of occupancy' are issued to household heads, thus precluding women from formal rights over land.
- Increased uncertainty also has been created around tenancy, since the government's claim to now own all land has led to some tenants refusing to pay rent to the person they consider their former landlord.

It is widely expected that the LUD will be rescinded by any incoming elected government to be installed in May 1999.

⁶⁴ Francis, P. For the use and common benefit of all Nigerians: Consequences of the 1978 land nationalisation. *Africa* 54(3): 5-28. Knox, A. Nigeria country profile. In: Land Tenure Center Profiles. 1998. Kolawole, A. Land reform and problems of access to agricultural and pastoral resources in Nigeria: An overview. In Goree workshop proceedings, IIED/GRET/University of St Louis. 1997.

3. CONCLUSIONS: FUTURE ISSUES AND PROSPECTS

–The tenure issue is becoming of major concern to both African policy-makers and development co-operation agencies. It tends to be approached from the point of view of providing stakeholders with security of tenure, but the meaning of "security of tenure" is far from unanimously agreed. Before tackling this question, one ~~should probably try to~~ must find out which land users feel insecure, and the reasons why.

–Tenure security in the policy debate tends to be seen in individual terms, whereas in most of West Africa, tenure is still to a large extent a community and family matter, even though moves towards privatisation have already begun and are probably irreversible. Taking a pragmatic approach, it would be more appropriate to envisage a gradual process in which the first step would be to achieve security of tenure on a collective basis. This would consist of identifying, recording and guaranteeing the rights of a community over an area of land and the associated bundle of resources. Within the community, rights would continue to be managed in accordance with current local practices. Individualisation of rights would then occur as the need for it came to be felt within the community. Such a community-based approach could build on current *gestion de terroirs* initiatives throughout the Sahel, and the 'local conventions' for natural resource management which are emerging in several West African countries, particularly Mali.⁶⁵ Such an approach to titling at village level has also been strongly advocated for Ghana.⁶⁶

It is also important that debate on tenure acknowledge that ownership and title are not the only means by which people access to land. A wide variety of institutional arrangements exist by which means people are able to acquire rights over resources, such as loans, tenancy, share-cropping, gifts, and pledging. Such mechanisms are often extremely significant, particularly for weaker social groups. Arrangements such as sharecropping of land and tree crops are central to much cash crop production in cocoa areas, while temporary rights to graze harvest stubble is crucial for the continued survival of mobile livestock keeping groups.

Decentralisation as a set of processes is under way in many countries, and will have many implications for how land and access to resources is handled. The distribution of roles and responsibilities between newly elected decentralised bodies and traditional chiefs remains to be sorted out in many places. Governments also will need to retain important functions within such a process, which include provision of the broad framework and principles underlying rules of tenure and access, and ensuring the transparency and accountability of local structures.

Current contradictions between customary practice and statutory codes need to be resolved, to mitigate the uncertainty and insecurity which results from such dualism. One means of doing so would be to identify the specific conditions under which statutory codes would

⁶⁵ Hilhorst, T & Coulibaly, A. (1999), Elaborating a local convention for managing village woodlands in southern Mali. IIED Drylands Programme Issue Paper no.78. Deme, Y (1998) Associations locales de gestion des ressources naturelles du Kelka, Mali. IIED Drylands Programme Issue Paper no. 74. London.

⁶⁶ Kasanga, K. Land tenure, resource access and decentralisation: the political economy of land tenure in Ghana. In Gorée workshop proceedings, IIED/GRET/University of St Louis (1997).

apply, such as in well-demarcated zones, like urban and peri-urban areas. Elsewhere, customary rights would apply.

Governments across the West African region are currently supporting a number of important initiatives related to land tenure and access to resources. National governments could usefully support ways of learning from these different initiatives and encouraging debate within the country on options for policy in the tenure field. Such public consultation is particularly appropriate during the process of drafting new land tenure codes, for parliamentary debate. Similarly, there is much valuable experience gained from the diverse project approaches under way across the region, which could be learned from and built upon, through support to a variety of networking activities.

~~I dont follow this at all—need to clarify with HO and French text~~